

E-Filed 6/11/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ECHOSTAR SATELLITE LLC, et al.

NO. C 07-6124 JW (RS)

Plaintiffs,

**FURTHER ORDER GRANTING
MOTION TO COMPEL**

v.

FREETECH, INC., et al.,

Defendants.

Freotech moves to compel documents from other litigation concerning FTA, hacking, piracy, and/or technology measures implemented to control access to DISH Network programming (document request number sixty-four (set three)). Freotech argues that documents Echostar filed in other cases relating to subjects in this litigation are relevant (especially those related to FTA piracy), while Echostar contends that not every previous lawsuit is relevant to the present dispute. Echostar also maintains that the document request as constructed currently is overly broad and burdensome.

Freotech represented at the hearing that it would refine the request, and Echostar agreed to meet and confer further with Freotech to reach a solution to this discovery dispute. In its May 18, 2009 Order, the Court instructed Freotech and Echostar to file a joint supplemental brief detailing the outcome of those efforts. The parties now report that they are unable to reach an agreement on that remaining discovery issue.

In their joint supplemental brief, each party sets forth compromise positions regarding the disputed discovery. Echostar proposes that it will produce written discovery responses and

1 transcripts from any piracy related case after January 1, 2004, relating to Freetech or Coolsat
2 receivers, including twelve specifically named cases, that neither are publicly available on PACER
3 nor constitute materials designated by a third-party as protected, and are within Echostar's
4 possession or control. Freetech proposes that Echostar must produce: (1) all written discovery
5 responses and all transcripts in cases filed after January 1, 2004, that contain the term "FTA" or
6 "free-to-air"; and (2) all written discovery responses and all transcripts in the twelve cases identified
7 in Echostar's response.

8 On balance, Freetech's position is the more appropriate. First, the revised request appears
9 likely to produce relevant information regarding Freetech's claim relating to damages that FTA
10 piracy is not the sole source of hacking into DISH Network programming. Second, Freetech's
11 compromise discovery addresses and limits the overly broad and burdensome nature of Freetech's
12 original document request. Instead of requiring all documents from all previous litigation, the
13 proposal properly limits the request to a reasonable time period and subject matter (FTA and/or free-
14 to-air) along with a list of twelve cases identified by both parties as responsive to the document
15 request.

16 IT IS SO ORDERED.

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18 Dated: 6/11/09

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20 RICHARD SEEBORG
21 United States Magistrate Judge
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